



October 24, 2022

Mr. Rod Philo, Environmental Services Superintendent
City of Arkansas City
118 W Central
P.O. Box 778
Arkansas City, KS 67005-0778

Reference: AGREEMENT for Arkansas City - Well No. 16
Arkansas City, KS
PEC Project No. 35-221014-000-0655

Dear Mr. Philo:

Professional Engineering Consultants, P.A. ("PEC") is pleased to provide professional services to City of Arkansas City ("Client") in connection with the referenced Project, and in accordance with this letter agreement ("Agreement"). The services to be performed by PEC ("the Services") are described in Exhibit A – Services, Schedule, and Payment (attached and incorporated by reference) and are subject to the following terms and conditions.

Performance. PEC will perform the Services with the level of care and skill ordinarily exercised by other consultants of the same profession under similar circumstances, at the same time, and in the same locality. PEC agrees to perform the Services in as timely a manner as is consistent with the professional standard of care and to comply with applicable laws, regulations, codes and standards that relate to the Services and that are in effect as of the date when the Services are provided.

Client Responsibilities. To enable PEC to perform the Services, Client shall, at its sole expense: (1) provide all information and documentation regarding Client requirements, the existing site, and planned improvements necessary for the orderly progress of the Services; (2) designate a person to act as Client representative with authority to transmit instructions, receive instructions and information, and interpret and define Client requirements and requests regarding the Services; (3) provide access to, and make all provisions for PEC to enter the project site as required to perform the Services, including those provisions required to perform subsurface investigations such as, but not limited to, clearing of trees and vegetation, removal of fences or other obstructions, and leveling the site; (4) site restoration and repair, as needed following field investigations; (5) establish and periodically update a project budget, which shall include a contingency to cover additional services as may be required by changes in the design or Services; and (6) timely respond to requests for information and timely review and approve all design deliverables. PEC shall be entitled to rely on all information and services provided by Client. Client recognizes field investigations may damage existing property. PEC will take reasonable precautions to minimize property damage whenever field investigations are included in the Services.

Payment. Invoices will be submitted periodically and are due and payable net 30 days from invoice date. Unpaid balances past due shall be subject to an interest charge at the rate of 1.5 % per month from the date of the invoice, and any related attorneys' fees and collection costs. PEC reserves the right to suspend the Services and withhold deliverables if the Client fails to make payment when due. In such an event, PEC shall have no liability for any delay or damage resulting from such suspension.

Work Product. PEC is the author and owner of all reports, drawings, specifications, test data, techniques, photographs, letters, notes, and all other work product, including in electronic form, created by PEC in connection with the Project (the “Work Product”). PEC retains all common law, statutory, and other reserved rights in the Work Product, including copyrights. The Work Product may not be reproduced or used by the Client or anyone claiming by, through or under the Client, for any purpose other than the purpose for which it was prepared, including, but not limited to, use on other projects or future modifications to the Project, without the prior written consent of PEC. Any unauthorized use of the Work Product shall be at the user’s sole risk and Client shall indemnify PEC for any liability or legal exposure arising from such unauthorized use. To the extent PEC terminates this Agreement due to non-payment by Client shall not be entitled to use the Work Product for any purpose without the prior written consent of PEC.

Unless otherwise agreed by Client and PEC, Client may rely upon Work Product only in paper copy (“hard copy”) or unalterable digital files, with either wet or digital signature meeting the requirements of the governing licensing authority having jurisdiction over the Project. In all instances, the original hard copy of the Work Product takes precedence over electronic files. All electronic files furnished by PEC are furnished only for convenience, not reliance by Client, and any reliance on such electronic files will be at the Client sole risk.

Insurance. PEC and Client agree to each maintain statutory Worker’s Compensation, Employer’s Liability Insurance, General Liability Insurance, and Automobile Insurance coverage for the duration of this Agreement. Additionally, PEC will maintain Professional Liability Insurance for PEC’s negligent acts, errors, or omissions in providing Services pursuant to this Agreement.

Supplemental Agreements. Changes in the Services may be accomplished after execution of this Agreement only by a written Supplemental Agreement signed by PEC and Client. For any change that increases PEC’s cost of, or time required for performance of any part of the Services, PEC’s compensation and time for performance will be equitably increased.

Differing, Concealed, or Unknown Conditions. If PEC encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided to PEC or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities provided for in this Agreement, PEC will, if practicable, promptly notify Client before conditions are disturbed. Subsurface condition identification is limited to only those points where samples are taken. The nature and extent of subsurface condition variations across the site may not become evident until construction. PEC assumes no liability for site variations differing from those sampled or changed conditions discovered during construction. If the differing, concealed, or unknown conditions cause an increase in PEC’s cost of, or time required for performance of any part of the Services, PEC’s compensation and time for performance will be equitably increased.

Additionally, Client (1) waives all claims against PEC and (2) agrees to indemnify and hold harmless PEC as well as its respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys’ fees from all third-party claims resulting from differing, concealed, or unknown conditions.

Fast-Track, Phased or Accelerated Schedule. Accelerated, phased or fast-track scheduling increases the risk of incurring unanticipated costs and expenses including costs for PEC to coordinate and redesign portions of the Project affected by the procuring or installing elements of the Project prior to the completion of all relevant construction documents, and costs for the contractor to remove and replace previously installed work. If Client selects accelerated, phased or fast-track scheduling, Client agrees to include a contingency in the Project budget sufficient to cover such costs.

Force Majeure. PEC will not be liable to Client for delays in performing the Services or for any costs or damages that may result from: labor strikes; riots; war; acts of terrorism; acts or omissions of governmental authorities, the Project Client or third parties; extraordinary weather conditions or other natural catastrophes; acts of God; unanticipated site conditions; or other acts or circumstances beyond the control of PEC. In the event performance of the Services is delayed by circumstances beyond PEC's control, PEC's compensation and time for performance will be equitably increased.

Construction Means; Safety. PEC shall have no control over and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for construction safety precautions and programs. PEC shall not be responsible for the acts or omissions of any contractor, subcontractor or any other person performing any work (other than the Services), or for the failure of any of them to carry out their work in accordance with all applicable laws, regulations, codes and standards, or the construction documents.

Cost Estimates. Upon request, PEC may furnish estimates of probable cost, but cannot and does not guarantee the accuracy of such estimates. All estimates, including estimates of construction costs, financial evaluations, feasibility studies, and economic analyses of alternate solutions, will be made on the basis of PEC's experience and qualifications and will represent PEC's judgment as a design professional familiar with the construction industry. However, PEC has no control over (1) the cost of labor, material or equipment furnished by others, (2) market conditions, (3) contractors' methods of determining prices or performing work, or (4) competitive bidding practices. Accordingly, PEC will have no liability for bids or actual costs that differ from PEC's estimates.

Termination. Both the Client and PEC have the right to terminate this Agreement for convenience upon fifteen calendar days' written notice to the other party. In the event the Client terminates this Agreement without cause, PEC shall be entitled to payment for all Services performed and expenses incurred up to the time of such termination, plus fees for any required transition services, and reimbursement of all costs incurred which are directly attributable to such termination.

Environmental Hazards. Client acknowledges that the Services do not include the detection, investigation, evaluation, or abatement of environmental conditions that PEC may encounter, such as mold, lead, asbestos, PCBs, hazardous substances (as defined by Federal, State or local laws or regulations), contaminants, or toxic materials that may be present at the Project site. Client agrees to defend, indemnify, and hold PEC harmless from any claims relating to the actual or alleged existence or discharge of such materials through no fault of PEC. PEC may suspend the Services, without liability for any damages, if it has reason to believe that its employees may be exposed to hazardous materials.

Betterment. PEC will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

Dispute Resolution. The Client and PEC will endeavor to resolve claims, disputes and other matters in issue arising out of this Agreement, the Project or the Services through a meet and confer session. The meeting will be attended by senior representatives of Client and PEC who have full authority to

resolve the claim. The meeting will take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meeting, the parties will exchange relevant information that will assist in resolving the claim.

If the parties resolve the claim, they will prepare appropriate documentation memorializing the resolution.

If the parties are unable to resolve the claim, PEC and Client agree to submit the claim to mediation prior to the initiation of any binding dispute resolution proceedings (except for PEC claims for nonpayment). The mediation will be held in Wichita, Kansas, and the parties will share the mediator's fees and expenses equally.

Jurisdiction; Venue; Governing Law. To the fullest extent permitted by law, PEC and Client stipulate that the Eighteenth Judicial District, District Court, Sedgwick County, Kansas is the court of exclusive jurisdiction and venue to determine any dispute arising out of or relating to this Agreement, the Project or the Services. PEC and Client further agree that this Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Kansas without regard to its conflict of laws principles.

Indemnity. To the fullest extent permitted by law, Client and PEC each agree to indemnify and hold harmless the other, as well as their respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees, provided such claim, loss, damage, or expense is attributable to bodily injury, sickness, disease, death, or property damage, but only to the extent caused by the negligent acts or omissions of the indemnifying party, or anyone for whose acts they may be liable.

Agreed Remedy. To the fullest extent permitted by law, the total liability, in the aggregate, of PEC and PEC's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages, including, without limitation, attorneys' fees, arising out of or in any way related to this Agreement, the Services, or the Project, from any cause and under any theory of liability, shall not exceed PEC's total fee under this Agreement. In no event will PEC be liable for any indirect, incidental, special or consequential damages, including, without limitation, loss of use or lost profits, incurred by Client or anyone claiming by, through or under Client.

Assignment. Client will not assign any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement will be binding upon the Client, its successors and assigns.

No Third-Party Beneficiaries. This Agreement is solely for the benefit of PEC and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of PEC or Client in favor of such third parties. Further, PEC assumes no obligations or duties other than the obligations to Client specifically set forth in this Agreement. PEC shall not be responsible for Client obligations under any separate agreement with any third-party.

Entire Agreement. This Agreement represents the entire and integrated agreement between PEC and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by a writing signed by PEC and Client.

Severability. If any provisions of this Agreement is determined to be unenforceable, in whole or in part, the remainder shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

Mr. Rod Philo
City of Arkansas City
Arkansas City - Well No. 16
October 24, 2022
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Thank you for engaging PEC; we look forward to working with you. If this Agreement is acceptable, please sign below and return an executed copy to me. Receipt of the executed copy will serve as PEC's notice to proceed with the Services.

Sincerely,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Nicole D. Franken

Nicole D. Franken, P.E.
Project Manager

NDF:ev

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Michael D. Kelsey
By: _____, Signatory

Printed Name: Michael D. Kelsey, P.E.

Title: Principal/Municipal Division Manager

Date: October 24, 2022

ACCEPTED:

CITY OF ARKANSAS CITY

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

A. Project Description.

1. The Project shall consist of Division of Water Resource (DWR) offset permitting assistance, DWR floodplain permitting as required, design, bidding assistance, and construction administration services for a new well, well equipment platform, and a meter vault constructed for Well No. 16 (replacement for Well No. 4). The existing well will be abandoned (by others) and the existing wellhouse will be demolished. The project will also include piping improvements to connect the proposed well to the existing raw water lines.
2. The platform will be designed to raise the electrical gear and wellhead above the 500-year flood elevation of approximately 1089 feet. The platform will not be enclosed – the electrical equipment will be designed for outdoor installation. A submersible pump will be installed as part of the project. The well pump will include a variable frequency drive that will be designed for elevated ambient temperatures. A generator will be installed as part of the project that will supply backup power to the Well No. 16 and future Well No. 17 (offset for Well No. 3). The generator will also be located on a platform above the 500-year flood elevation.
3. The Project delivery method is design-bid-build. The test hole and well installation contractor and hydrogeologist will be contracted directly with the City for the Project.

B. Anticipated Project Schedule.

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed. A detailed schedule will be developed with the CLIENT during the project kickoff meeting.
2. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services. PEC will not have control over or responsibility for any contractor or vendor's performance schedule.

C. Project Deliverables.

1. This Project Deliverables shall consist of the following sealed by an Engineer licensed in the State of Kansas where applicable:
 - a) Preliminary Construction Documents, Plans, and Specifications
 - b) Final Construction Document, Plans and Specifications
 - c) Signed and sealed Geotechnical Report based on the Geotechnical Engineering Services below. Geotechnical Report shall be included as an Appendix in the Project Manual (specifications).

D. Scope of Services.

1. Topographic Field Survey
 - a) Set inter-visible control points in area of construction. Obtain reference ties.
 - b) Set benchmark within building area for construction. Establish benchmark within the project area at 600' intervals related to specific project datum.
 - c) Show section lines and Right of Way lines.
 - d) Collect topographic survey data, including surface locations sufficient to provide 1'

contours per the project limits. Data collection of all surface features shall be adequate for surface modeling.

- e) Locate all above and below grade utility improvements.
- f) The coordinate base will be Kansas State Plane NAD 83(2011) South Zone and the elevations will be referenced to the NAVD 88 datum.
- g) Process survey notes for base plan preparation.
- h) Review record information and drawings for utilities, survey control stations and vertical datum marks.
- i) Locate Geotech boring and test hole locations and report locations on the base plan.
- j) Determine the base flood elevation and identify on the base plan.

2. Geotechnical Engineering Services

- a) Use an appropriate One-Call utility locate system prior to arriving onsite.
- b) One subsurface boring to a depth of 20 feet below existing grade or auger refusal for the platform footings and access drive design (two borings total).
- c) SPT sampling at the following intervals (feet below existing grade):
 - 1.5, 3.0, 6.0, 8.5, and at 5.0 intervals thereafter
- d) Relatively undisturbed soil samples (Shelby Tubes) will also be obtained.
- e) Grab/bulk samples from auger cuttings will be obtained depending on site conditions.
- f) Laboratory testing will be performed to determine the following index and engineering properties:
 - Moisture Content
 - Density
 - Atterberg Limits
 - Percent Passing #200 sieve
 - Swell/Consolidation
 - Unconfined compressive strength
- g) A Geotechnical Report that including boring logs, soil descriptions and classifications, groundwater elevations at the time of drilling, and laboratory test results.
- h) Geotechnical recommendations, including shallow foundation design parameters, access drive recommendations, earthwork, lateral earth pressures, excavation, soil stabilization, and controlled fill.
- i) Boreholes will be plugged with sodium bentonite, auger cuttings (spoils) and capped with similar materials.
- j) General cleanup of the site.

3. General Scope Items for Civil Services

- a) Participate in a virtual kickoff meeting to discuss project improvements.
- b) Attend up to two progress design meetings with CLIENT.
- c) Provide bidding assistance including advertising, distribution of document to prospective bidders, response to Contractor's questions and preparation, distribution of Addenda, and tabulation and review of bids.
- d) Provide Engineer's opinion of probable construction cost.
- e) Perform one construction observation site visit to establish substantial completion and development of a written punch list.
- f) Prepare DWR applications for change in point of diversion. Scope is based on offsetting of wells within the jurisdiction of the local DWR office. A supplemental agreement will address any additional time required if the local DWR office cannot process the change request.

- g) Coordinate work with the Division of Water Resources to determine if floodplain permitting is required. Submit required permitting document as required.

4. Design Services

- a) One on-site meeting with design team to review site conditions and requirements.
- b) Coordinate with the driller (Layne) to complete test wells, test pumping, and water sampling.
- c) Process, structural, electrical, and controls design of municipal water supply well components, meter vault, and equipment platform. Controls shall include remote control of wells through the existing CLIENT SCADA system. Structural design to include design for two (2) steel platforms with guardrails, stairs, and secondary support for equipment. Preliminary pump design based on test well and geologist recommendations and final pump design based on pump testing on constructed well.
- d) Electrical engineering design including:
 - Coordinate with utility on electrical service design.
 - Design electrical service. It is assumed that the existing electrical service is sufficient for the new equipment installation.
 - Design interior and exterior building lighting systems.
 - Design building electrical distribution systems.
 - Design general purpose power and equipment connections.
 - Design local controls and interface with existing CLIENT SCADA.
 - Design emergency standby generator with provisions for connection to future offset of Well No. 3.
- e) Location specific design for the well including waterline pipe sizing and alignment to connect the well to the existing raw water system, site geometry/access, and site grading/drainage.
- f) Preparation of plans, specifications and construction cost estimates. Progress submittals shall be provided to the CLIENT for 30% and 90% design. A virtual design review meeting will be held with the CLIENT after submittal of each progress set.
- g) Prepare Public Water Supply permit application and submit with sealed plans and specifications to KDHE for review and approval. Address comments as required to obtain KDHE approval.
- h) Identify all utilities within the project limits and coordinate resolution of potential conflicts with each company.

5. Construction Administration Services

- a) Conduct a pre-construction meeting with the CLIENT and Contractor.
- b) Make up to three (3) visits to the PROJECT site to determine Contractor's progress and general character of the work.
- c) Provide recommendations on decisions in accordance with the Contract Documents on questions regarding this work.
- d) Review materials test reports.
- e) Prepare Change Orders covering modifications or revisions, as needed.
- f) Review Contractor's pay applications.
- g) Conduct final inspection of the work to establish Substantial and prepare and distribute punchlist. Verify completion of all items through communication with CLIENT to establish Final Completion.
- h) Issue Certificate of Substantial Completion.
- i) Review shop drawings for systems and elements designed by PEC. Review period

will be 10 business days after received by PEC office unless other terms are agreed to by PEC and CLIENT.

- j) Respond to RFIs generated by the contracting team. Response will be provided in 7 working days after received by PEC office unless other terms are agreed to by PEC and CLIENT.
- k) Preparation of record drawings of the construction improvements from red lined mark-ups provided by the contractor and Resident Project Representative. Record drawings shall be edited PDF files of the sealed drawings.

E. Responsibilities of CLIENT.

- 1. The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.
 - a) Provide access to project sites.
 - b) Review prepared permits, plans, and specifications.
 - c) Drawings, studies, reports, and other information available pertaining to the existing site and utilities.
 - d) Provide data, equipment information etc. for existing water supply wells.
 - e) Review prepared permits, plans, and specifications.
 - f) Provide required CLIENT utility locates.
 - g) The Owner shall establish and pay for a testing and inspection plan that includes all code mandated special structural inspections to be performed.

F. Exclusions.

- 1. The following shall be specifically excluded from the Scope of Services to be provided by PEC.
 - a) Construction material testing.
 - b) Offsite removal of soils.
 - c) Handling of contaminated soils.
 - d) Environmental assessments/clearances.
 - e) DWR well completion forms or other required communications.
 - f) Funding assistance.
 - g) Coordination or oversight of any additional field investigations/testing by drilling companies.
 - h) Structural Special Inspections, unless specifically noted in Scope of Services.
 - i) Boundary surveys.
 - j) Any permitting fees will be paid for directly by the Owner.

G. Payment Provisions.

- 1. PEC proposes to perform the Scope of Services on the basis of a lump sum fee of \$64,500.
- 2. Unless otherwise agreed upon, billings will be made once a month for work completed the previous month. Taxes are not included in stated fees. CLIENT shall reimburse PEC for any sales, use and value-added taxes, which apply to these services.